

Appeals panel reverses conviction in grocery store theft

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A theft charge over consumption of a \$1.09 bottle of tea in a Kroger store in Brentwood may be headed for a second trial, now that a state appeals court has reversed the misdemeanor conviction of college student Michael Nevens.

A three-judge panel of the Tennessee Court of Criminal Appeals has sent the case back to Williamson County, after ruling that Circuit Judge Timothy Easter did not give the jury sufficient instructions on what constitutes theft.

Nevens, then 18, was convicted of theft after a two-day jury trial in Franklin in September 1999.

Easter subsequently sentenced Nevens to serve seven days in jail, spend almost a year on probation, perform 50 hours of community service, submit to random drug screens and stay out of Kroger stores.

But the sentence has been delayed while Nevens, a student at Middle Tennessee State University, appealed his conviction.

The Court of Criminal Appeals ruled Friday that Easter should have instructed the jury to consider the legal theory of "mistake of fact."

"If you are honestly mistaken about a fact, then you can be acquitted," Nashville attorney David Raybin, who represented Nevens on appeal, said yesterday.

Nevens testified that he thought his mother had paid for two small bottles of Nestea as they shopped in Kroger, so he left his bottle on a shelf when he finished it.

Anita Nevens testified that she told the checkout cashier to charge her for two bottles of tea. She said her son was not with her when she paid for her groceries.

The cashier testified that Anita Nevens was talking with a friend in the checkout line and she did not tell him to charge her for two teas.

An off-duty Brentwood police officer who was working security in the store testified that Michael Nevens put his empty tea bottle on a shelf and "hid" it behind a jar of jelly.

"The evidence in this case fairly raised the defense of mistake of fact," the Court of Criminal Appeals said. If Michael Nevens thought his mother paid for the tea, "this mistake would negate the intent to steal," the court said.

State Attorney General Paul Summers has not decided whether to ask the Tennessee Supreme Court to reinstate Michael Nevens' conviction, a spokeswoman said yesterday. If Summers does not appeal last Friday's ruling, it will be up to Williamson County prosecutors to decide whether to take the case to trial again.

Anita Nevens declined to comment on the case when she was contacted yesterday at her home in Brentwood.

Raybin said yesterday that the Nevens family no longer shops at Kroger. He declined to comment on the family's legal fees, except to say that they are astronomical in comparison with the amount involved in the shoplifting case.

Michael Nevens' father, Robert Nevens, is an executive with Hospital Corp. of America.